UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA, Plaintiff, v. CHEMICAL RECOVERY SYSTEMS, INC., Defendant.	)	Civil Action No.

COMPLAINT FOR INJUNCTIVE RELIEF AND RESTITUTION

Introduction and Nature of Case

1. This is a civil action brought by the United States of America on behalf of the Administrator of the United States Environmental Protection Agency (EPA) to abate an imminent and substantial endangerment to public health and the environment at Chemical Recovery System's waste site in Elyria, Ohio pursuant to Section 7003 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6973, and to enjoin violations of Section 301(a) of the Clean Water Act (CWA), 33 U.S.C. 1311(a). This suit also seeks restitution for monies expended by the United States to investigate violations of these statutes at this site.

Defendant, Chemical Recovery Systems Inc. (CRS) is and has been engaged in the handling, storage, treatment and disposal of chemicals and hazardous wastes at 124 Locust Street Elyria, Ohio (the CRS site). Defendant's activities have created a continuing imminent and substantial endangerment to human health and the environment. As a result of hazardous and environmentally unsound practices by the defendant, a serious threat of pollution and actual pollution of the Black River has occurred.

Jurisdiction, Venue and Notice

2. This Court has jurisdiction over this case pursuant to 28 U.S.C. §1331; 28 U.S.C. §1345; 42 U.S.C. §6973; and 33 U.S.C. §1319.

3. The CRS site, which is the subject of this Complaint, is located within Lorain County in the Northern District of Ohio and venue is proper in this District pursuant to 28 U.S.C. §1391(b).

4. Notice of the commencement of this action has been given to the State of Ohio, pursuant to 42 U.S.C. §6973.

Defendant

5. Chemical Recovery Systems, Inc. (CRS), which is and was at all pertinent times the operator of the CRS site, is a corporation, incorporated under the laws of the State of Ohio for purposes of processing chemical waste, and is a "person" within the meaning of Section 1004(15) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §6903(15).

The Site and its Operation

6. The CRS site, consisting of approximately 4 acres, is 2-1/2 blocks from the center of downtown Elyria, Ohio (population approximately 50,000). The site, which is only partially fenced, is bordered by the Black River on the north and west (part of the navigable waters of the United States) and Locust Street on the east. Several private residences and a church are approximately 500 to 600 feet from the site across the Black River.

7. The topography of the site is such that storm water runoff from the surrounding area drains through the site

and enters the Black River. In addition, there are several ditches on the site which collect runoff and drain into the Black River. The soil condition at the site is porous, containing considerable sand and gravel and having a low water capacity, so that liquids drain through it rapidly.

8. From some time in 1974 through the present CRS has operated a solvents recovery facility and storage yard for solvent waste at the CRS site.

9. CRS owns two solvent recovery stills which are inside two buildings on the site and it currently operates at least one of these stills. The stills have a capacity of approximately 200 to 300 gallons per hour.

10. At least one of the solvent recovery stills (the Brighten unit) is obsolete, poorly maintained and poses a substantial risk of fire. The second still (the Rodney Hunt unit) also poses a risk of fire if operated without needed repairs. The distillation buildings are not provided with ventilation fans.

11. CRS receives spent solvents which are transferred for distillation through temporary rubber hosing, connected by radiator clamps. These transfer operations consistently result in contaminated solvents spilling onto the ground.

12. Approximately 800 55-gallon drums containing liquid organic chemical wastes are stored on site.

13. Approximately 3200 additional 55-gallon drums, partially filled with organic chemical wastes in liquid, sludge and solid forms, are stored on the site. Many of these drums are rusting, deteriorating and leaking their contents onto the ground. Some drums are stacked three high without pallets between them or with pallets in a poor state of

repair. The piles are in danger of collapse. Other drums are stacked precariously near the bank of the Black River. Few of the drums have labels which adequately identify their contents.

14. These spent solvents have flash points as low as 34°F and 60°F and are being handled in a careless and reckless manner. The term "flash point" refers to the temperature at which a liquid gives off a vapor sufficient to form an ignitable mixture with the air above the surface of the liquid. Electrical pumps, which are not properly connected, and fork-lift trucks are operated in close proximity to the stills, creating the danger that fumes and chemicals may be ignited by sparks.

15. There are pools of liquids containing hazardous wastes standing on the site.

16. A sump, located in the building on the bank of the Black River housing the Brighten unit, is in a poor state of repair. This sump contains substantial quantities of waste chemicals.

17. Wastes have leached and are continuing to leach through the soil, contaminate waters in the ground and leach from the bank of the Chemical Recovery site and into the waters of the Black River. There is a leachate stream from the bank into the Black River.

18. A collection of chemical wastes with a visible oily sheen is impounded behind a makeshift canvas boom in the Black River adjacent to the site.

19. Upon information and belief, wastes are leaching from the CRS site into a storm sewer that runs under the site and discharges into the Black River.

20. Waste materials spilled from drums, transfer operations and the still operations at the CRS site have contaminated the soil and contaminate waters into which they seep.

Nature of the Hazard

21. Included among the chemicals which have been identified in soil, water, air and drum samples collected at the CRS site and/or in the Black River at levels sufficient to affect adversely human health and the environment are the following:

a. Polychlorinated Biphenyls (PCBs)

1. PCBs are carcinogenic and both acutely and chronically toxic through oral and dermal exposure. Among the toxic effects of PCBs are chloracne and liver atrophy with ensuing nausea, vomiting, loss of weight, jaundice, edema and abdominal pain. Oral exposure to PCBs has been known to cause death.

2. PCBs are extremely persistent and bioaccumulate in fatty tissues. This leads to biomagnification of concentrations in the food chain so that even low levels in the environment can ultimately result in toxic effects. PCBs, when heated to decomposition, emit highy toxic fumes.

3. For the maximum protection of human health from the potential carcinogenic effects of PCBs, EPA has proposed a water quality criterion of zero for these substances. For the protection of freshwater aquatic life, a water quality criterion for PCBs of 0.0015 parts per billion (ppb) as a 24-hour average has been proposed and the concentration should not exceed 6.2 ppb at any time.

4. On November 26, 1979, EPA found concentrations of PCBs in sediment and sump liquid ranging up to 20,000 ppb.

5. On February 5, 1980, EPA found PCBs in a soil sample adjacent to the still building on the bank of the Black River in a concentration of 590,000 ppb.

6. On April 24, 1980, EPA found concentrations of PCBs at 200 ppb in the Black River.

7. On April 24, 1980, EPA found 17,500 ppb of PCBs in a leachate stream running from the bank of the CRS site into the Black River.

8. On April 24, 1980, EPA found PCBs at a concentration of 20 ppb in the discharge of the storm sewer running underneath the CRS site.

b. Tetrachloroethene

1. Tetrachloroethene produces adverse effects on the central nervous system and is also a carcinogen. Its effects include depression, nausea, and, at high exposure, unconsciousness and death. Exposure to tetrachloroethene also causes liver dysfunction. When heated to decomposition, tetrachloroethene emits highly toxic chloride fumes.

2. For the maximum protection of human health from the potential carcinogenic effects of tetrachloroethene, EPA has proposed a water quality criterion of zero for this substance. For the protection of freshwater aquatic life, a water quality criterion of 310 ppb as a 24-hour average has been proposed. Under this criterion, the concentration should not exceed 700 ppb at any time.

3. EPA has found concentrations of tetrachloroethene ranging from 19,000 ppb to 730,000 ppb in soils and pools of liquid on the site.

c. Toluene

1. Toluene is flammable and presents a dangerous fire risk when exposed to heat, sparks or flames. The flash point of toluene is 40°F.

It can react vigorously with oxidizing materials and, when heated, it emits toxic fumes.

2. Toluene is moderately toxic by ingestion, inhalation and skin absorbtion. Exposure to 200 ppm to 500 ppm can cause headache, nausea, loss of appetite and severe impairment of coordination. Toluene has been designated a priority pollutant under Section 304(a) of the Clean Water Act, 33 U.S.C. 1314(a). For the protection of freshwater aquatic life a water quality criterion of 2.3 parts per million (ppm) in ambient water as a 24-hour average has been proposed and the concentration should not exceed 5.23 ppm at any time.

3. EPA has found concentrations of toluene ranging from 28.0 ppm to 7,800 ppm in soils and pools of liquid on the site.

d. Methyl Ethyl Ketone (MEK)

1. MEK poses an extremely dangerous fire risk when exposed to heat or flame. It has a flash point of 35°F. Its explosive limits in air are 2% to 10%. The term "explosive limits" refers to the range of concentration of a flammable gas or vapor in air (in percent by volume) in which combustion or explosion can occur. A concentration below the lower limit is not sufficient to support combustion or explode, and above the upper limit the air mixture is too concentrated to combust or explode. MEK is narcotic by inhalation and can produce skin irritation on contact.

2. On February 5, 1980, EPA inspectors observed liquid leaking onto the ground at the CRS site from a valve on a MEK bulk storage tank with a capacity of approximately 15,000 gallons.

e. Xylene

1. Xylene presents a high fire risk and has a flash point of 81° to 115°F. Xylene is a central nervous system depressant. Ingestion and inhalation cause disorientation, loss of coordination and dizziness. Xylene has been designated as a hazardous substance under Section 311(b) (2)(A) of the Clean Water Act, 33 U.S.C. 1321(b)(2)(A) (44 Federal Register 50766, August 29, 1979).

2. EPA has found concentrations of xylene ranging from 28.0 ppm to 3,300 ppm in soils and pools of liquid on the site.

f. Hexachloroethane

1. Acute exposure to hexachloroethane has resulted in severe liver and kidney damage in animals. Human exposure has produced central nervous system damage demonstrated by abnormalities in ocular function. Hexachloroethane produces liver carcinomas in animals and is a suspected human carcinogen. On heating to decomposition, hexachloroethane releases toxic and corrosive gases including chlorine, hydrogen chloride, and phosgene.

2. For the maximum protection of human health from the potential carcinogenic effects of hexachloroethane, EPA has proposed a water quality criterion of zero for this substance. For the protection of freshwater aquatic life, a water quality criterion of 62 ppb as a 24-hour average has been proposed. Under this criterion, the concentration of hexachloroethane should not exceed 140 ppb at any time.

3. EPA has found concentrations of hexachloroethane of 6,500 ppb and 5,700 ppb in soils and spills on the site.

g. Aromatic Hydrocarbon Chemicals

1. A large number of these chemicals have been found on the CRS site. These include ethylbenzene, naphthalene, propyl benzene, trimethylbenzene and approximately 20 others in addition to toluene and xylene. These materials produce varying toxic effects including narcosis, other central nervous system disorders and blood chemistry disorders. They are tissue irritants affecting the eyes, skin, mucous membranes and the respiratory tract. Aromatic hydrocarbon chemicals are highly flammable and present an extreme fire risk when handled improperly. This group of chemicals constitutes a significant proportion of the materials handled by CRS. Ethylbenzene has been designated as a hazardous substance under Section 311(b)(2)(A) of the Clean Water Act, 33 U.S.C. 1321(b)(2)(A). (40 C.F.R. Part 116 as amended by 44 Federal Register 50766, August 29, 1979).

2. EPA has found concentrations of trimethylbenzene as high as 6,000 ppm and concentrations of ethylbenzene as high as 2,300 ppm in a pool of liquid on the site.

3. On April 24, 1980, EPA found six aromatic hydrocarbon compounds in concentrations ranging from 470 to 64,000 ppb in the slick impounded behind the makeshift canvas boom in the Black River. Napthalene was discovered in concentrations of 590 ppb.

4. On April 24, 1980, EPA found naphthalene at a concentration of 140 ppb and phenanthrene at a concentration of 28 ppb in the discharge of a storm sewer pipe running underneath the CRS site.

h. Metals

1. In addition to the chemicals listed above, several toxic and/or hazardous metals have been detected on the

CRS site, three of which -- lead, chromium and cadmium -- have been found in significant quantities. EPA has established water quality criteria for each of these metals.

Lead adversely affects almost every organ in the body. It has been shown to produce cancer and birth defects in animals. Chromium compounds cause kidney damage and produce lesions and ulcers on exposed skin and mucous membranes. Hexavalent chromium has been documented to cause cancer in workers exposed to this metal. Cadmium is a demonstrated animal carcinogen and causes the development of abnormal fetuses in animals. Occupational exposure to cadmium has resulted in severe pulmonary and kidney disorders.

2. EPA has found concentrations of lead as high as 11.8 ppm, cadmium as high as 0.270 ppm and total chromium as high as 2.17 ppm in the sump liquid on the site.

22. The discharges from the CRS site into the Black River constitute a serious threat to the aquatic environment.

23. The CRS site poses a fire hazard.

24. To ascertain the nature and extent of the contamination and hazards described above, it was necessary for the U.S. EPA to expend in excess of $25,000 to inspect, sample and analyze soil, air and surface water.

First Claim For Relief

(Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6973)

25. Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6973, provides that the Administrator of EPA may bring suit for appropriate relief upon receipt of evidence that the handling, storage, treatment, transportation

or disposal of any solid or hazardous waste is presenting an imminent and substantial endangerment to health or the environment.

26. The wastes present on the CRS site, leaking onto the soil, leaching into the Black River and entering the environment are hazardous wastes as defined in Section 1004(5) of RCRA 42 U.S.C. 6903(5).

27. The activities of defendant at the site constitute handling, storage, treatment and disposal of solid and hazardous wastes.

28. The handling, storage, treatment and disposal of the hazardous wastes by defendant present an imminent and substantial endangerment to health and the environment within the meaning of Section 7003 of RCRA, 42 U.S.C. 6973, and constitute a public nuisance. Defendant has caused and contributed to the storage, treatment and disposal and is responsible for the resulting conditions.

Second Claim for Relief

29. Plaintiff realleges paragraphs 1 through 23.

30. Section 301(a) of the Clean Water Act, (CWA), 33 U.S.C. 1311(a), prohibits the discharge of pollutants into navigable waters except in compliance with Sections 301 and 402 of the CWA, 33 U.S.C. §1311 and §1342.

31. Chemicals entering the Black River from CRS are pollutants as that term is defined in Section 502(6) of CWA, 33 U.S.C. §1362(6).

32. On numerous dates, best known to defendant, there were discharges of pollutants from the storm sewer pipe from the CRS facility into the Black River.

33. The leachate stream on the bank of the CRS site, the CRS site, and the storm sewer pipe stemming from the CRS site, leading into the Black River, are discrete conveyances of pollutants to waters of the United States and therefore constitute point sources as defined in Section 502(14) of the Clean Water Act, 33 U.S.C. §1362(14).

34. The Black River is a navigable water under CWA 502(7), 33 U.S.C. §1362(7).

35. The discharges violated 33 U.S.C. §1311(a) and subject defendant to injunctive relief and penalties under 33 U.S.C. §1319.

Third Claim for Relief

36. Plaintiff realleges paragraphs 1 through 24.

37. In an attempt to ascertain the nature and extent of damage and danger caused by the above-described disposal of hazardous wastes by Defendant, CRS, the U.S. EPA has expended in excess of $25,000. These expenses were necessary and reasonable, and Plaintiff is entitled to recoup from Defendant all such funds.

Prayer For Relief

WHEREFORE, the Plaintiff, the United States of America, prays that this Honorable Court require Defendant to:

A.1. Immediately remove all barrels, drums, and other chemical waste containers on the bank of the Black River to a point at least thirty (30) feet from the edge of such embankment and in all events to a place where such barrels, drums, and other chemical waste containers are not in danger of falling into the Black River;

2a. Within thirty (30) days of the entry of an order of this Court inventory and label all drums, tanks, and other

containers containing chemical wastes on-site in accordance with EPA, Department of Transportation, and Occupational Safety and Health Administration markings and criteria and transfer the contents of any leaking, rusted, or damaged drums or containers into secure containers with linings suitable for the chemicals they are to contain;

2b. Restack all barrels, drums, and other chemical waste containers and ensure that all chemicals and drums on the CRS site are stored in conformance with the National Fire Protection Association Flammable and Combustible Liquids Code (NFPA 30);

3. Immediately cease the receiving of chemical wastes on site until a plan has been formulated by Defendant and approved by EPA for rehabilitation of the site, and for the operation of the solvent reclamation facilities in compliance with applicable federal and state law;

4. Cease, desist, and refrain from operating the solvent recovery stills on the CRS site described in paragraphs 9 and 10 of this Complaint until the stills can be operated in accordance with an EPA approved plan and in a manner which does not present a threat to human health, safety, and the environment. Such plan shall detail repairs to be performed, controls to be installed, a time schedule for implementation of repairs and controls, and operational procedures for continued solvent reclamation activities;

5. Cease from disposing or allowing, suffering or causing the disposal of any hazardous and solid wastes into and upon the ground of Defendant's CRS site and environs;

6. Within thirty (30) days of the entry of an order of this Court complete the existing fence so as to entirely enclose the CRS site;

7. Immediately undertake all measures necessary to provide that all tanks and other bulk storage facilities on the CRS site are installed in accordance with the National Fire Protection Association, Flammable and Combustible Liquids Code (NFPA 30). Conformance with the Code shall be certifed to EPA by an independent registered engineer;

8. Within thirty (30) days of the entry of an order of this Court, remove to an EPA approved disposal site, all hazardous waste materials which are not reclaimable or recyclable at the CRS site;

B.1. Determine the nature and extent of contamination of soil and waters, including the Black River, by chemical wastes stored, treated, and disposed of on the CRS site:

a) Such determination to be made by an independent testing consultant approved by EPA and in accordance with a testing plan approved by EPA.

b) Such determination to be made within sixty (60) days of the entry of an order of this Court;

2. Formulate and submit to EPA for approval within thirty (30) days of the determination in paragraph B(1), a plan for the removal of contaminated soil from the site, purgation of contaminants, and/or treatment of contaminated soils and waters; and, removal and treatment of chemicals impounded by the boom in the Black River;

3. Initiate the remedial measures of the EPA approved plan within ten (10) days of EPA approval;

4. Complete all remedial measures, including removal, purgation, and/or treatment of contaminated soils and waters, including the Black River, within ninety (90) days;

5. Install and maintain an EPA approved soils and waters monitoring system adequate to evaluate the effectiveness of remedial measures;

6. Report weekly to EPA on the progress of remedial measures.

C. Obtain a performance bond immediately to insure the payment of funds to finance the remedial measures ordered in subparagraphs "A" and "B", the amount of which to be determined in later proceedings.

D. Pay civil penalties of $10,000 per day for violation of Section 301(a) of the Clean Water act, 33 U.S.C. §1311(a).

E. Permit Plaintiff and its agents and contractors to enter and inspect Defendant's property and take samples of soil, waters and chemical wastes at the site and to monitor and observe remedial measures taken by Defendant.

F. Reimburse Plaintiff for all funds expended in taking samples and otherwise investigating, identifying, quantifying, and locating chemical contaminants on and migrating from Defendant's property.

G. Reimburse Plaintiff for the costs of this suit.

H. And that the Court award such other and further relief as the Court deems just and proper.

DATED:_____

Respectfully submitted,

James W. Moorman

JAMES W. MOORMAN
Assistant Attorney General
Department of Justice
Washington, D. C. 20530

JAMES R. WILLIAMS
United States Attorney

Assistant United States Attorney

Paul J. Schaeffer

PAUL J. SCHAEFFER
Attorney, Hazardous Waste Section
Land and Natural Resources Division
Department of Justice
9th and Constitution Avenue, N. W.
Washington, D. C. 20530

MARIAN H. NEUDEL
Attorney, U. S. Environmental Protection
Agency, Region V.
?30 South Dearborn Street
Chicago, Illinois 60604

FREDERICK F. STIEHL
Attorney, Hazardous Waste
Enforcement Task Force (EN-335)
U.S. Environmental Protection Agency
401 M Street, S. W.
Washington, D. C. 20460